

ESTTA Tracking number: **ESTTA333051**

Filing date: **02/19/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91185310
Party	Defendant Weems Industries, Inc. dba Legacy Manufacturing Company
Correspondence Address	BRIAN J. LAURENZO DORSEY & WHITNEY LLP 801 GRAND AVE, STE 3900 DES MOINES, IA 50309-2790 UNITED STATES laurenzo.brian@dorsey.com
Submission	Motion to Amend Application
Filer's Name	Brian J. Laurenzo
Filer's e-mail	laurenzo.brian@dorsey.com
Signature	/BJL/
Date	02/19/2010
Attachments	MotiontoAmendwoConsent.pdf (38 pages)(1258456 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BIG O TIRES, LLC,

Plaintiff,

v.

WEEMS INDUSTRIES, INC. dba
LEGACY MANUFACTURING
COMPANY

Defendant.

) Opposition No.: 91185310

) Mark: LEGACY

) Application Serial No.: 77/109,547

) **DEFENDANT’S MOTION TO AMEND**
) **APPLICATION WITHOUT CONSENT**

)
)

COMES NOW Defendant Weems Industries, Inc. d/b/a Legacy Manufacturing Company, pursuant to 37 C.F.R. 2.133, and for its Motion to Amend Application without Consent states as follows:

1. Defendant filed Federal Trademark Application Serial No. 77/109,547 on February 2, 2007 for the mark “LEGACY” in association with various goods listed in International Classes 6, 7, 8, 9, 17, 20 and 21. *See* Trademark Electronic Search System (TESS) Results for Application Serial No. 77/109,547, Exhibit A.

2. Defendant’s application was approved for publication on the Principal Register and published for opposition March 18, 2008. *Id.*

3. On or about July 16, 2008, Plaintiff instituted the present opposition proceeding, opposing defendant’s registration of the mark “LEGACY” in association with the goods listed in International Classes 7, 9 and 21. *See* Plaintiff’s Notice of Opposition, Exhibit B.

4. Plaintiff relies upon two federal trademark registrations as a basis for the opposition:

- (a) United States Trademark Registration No. 1,393,967 for the mark “LEGACY” in association with “vehicle tires” in International Class 12 (hereinafter the “‘967 Registration”); and
- (b) United States Trademark Registration No. 3,003,292 for the mark “LEGACY TOUR PLUS” in association with “tires” in International Class 12 (hereinafter the “‘292 Registration”). *See id.* at ¶ 3.

5. Plaintiff opposes all goods listed by Defendant in association with International Classes 7, 9 and 21, specifically:

- (a) International Class 007. Goods & Services: Air-operated power tools, namely, impact wrenches, ratchets, sanders, air hammers, chisels, drills, nailers, grinders, cut-off discs; abrasive disks for air-operated power sanders; grinding disks for air-operated power grinders, blow guns; compressed air pumps, machine parts, namely, metal air nozzles, air hose adapters, air hose chucks, needles and connectors which are parts of air-operated power tools; needles for pumps for inflating tires; tire inflation nozzles; air operated grease systems, namely, grease pumps, grease guns, grease reservoirs, hoses, hose reels, couplers, plugs, dollies, fittings for connection of hoses, clamps, grease fitting repair tools, grease storage containers, grease dispensers, grease, rechargeable batteries, grease injectors, grease injector needles, grease gun nipples, air bleeder valves, grease gun holders, warming bags for grease guns and grease all for use with dispensing grease; air operated oil systems, namely, oil pumps, oil control guns, oil gun extensions, oil nozzles, oil swivels, hoses, suction tubes for oil pumps, oil dispensing tappers for oil pumps, couplers, plugs, meters for measuring volume, dollies, oil storage containers, and waste oil recovery containers all for use with pumping oil.
- (b) International Class 009. Goods & Services: Tire pressure gauges, tire tread depth gauges, and electrical circuit testers.

- (c) International Class 021. Goods & Services: Plastic compressed air hose nozzles, hose nozzles, pouring spouts and funnels; plastic pour spouts with valve for mounting on motor oil bottle; plastic spray nozzles. *See id.* at ¶ 4.

6. Plaintiff further asserts the goods listed by Defendant in association with International Classes 7, 9 and 21 are the same, similar and/or related, to the goods in connection with which Plaintiff uses the “LEGACY” mark and are sold or offered through the same or similar channels of trade, or to the same general class of purchasers, in and to which Plaintiff’s products and services are marketed and/or sold. *See id.* at ¶ 6.

7. Defendant disagrees with Plaintiff’s assertion that Defendant’s trademark application includes the “same” goods as Plaintiff’s registrations. The good identified in the ‘967 Registration includes only “vehicle tires”, while the good identified in the ‘292 Registration includes only “tires”. *See id.* at ¶ 3. Defendant’s trademark application does not include “vehicle tires”, “tires” or any type of tire within the description of associated goods which could be the “same” as Plaintiff’s “vehicle tires” or “tires”. *See id.* at ¶ 4.

8. Defendant further disagrees with Plaintiff’s assertion that Defendant’s trademark application includes “similar and/or related” goods as Plaintiff’s registrations. Defendant’s trademark application includes four goods which may be used in association with Plaintiff’s “vehicle tires” or “tires”, specifically: “needles for pumps for inflating tires” and “tire inflation nozzles” in International Class 7 and “tire pressure gauges” and “tire tread depth gauges” in International Class 9. Defendant’s goods do not include “vehicle tires”, “tires” or any type of tire similar to the goods listed in Plaintiff’s ‘967 and ‘292 Registrations. However, “[t]hat two goods are used together...does not, in itself, justify a finding of relatedness.” *Shen Mfg. Co., Inc. v. Ritz Hotel, Ltd.*, 393 F.3d 1238, 1244, 73 U.S.P.Q.2d 1350 (Fed. Cir. 2004) (finding no

likelihood of confusion between “RITZ” for kitchen textiles, including kitchen towels, dish cloths, aprons, barbecue mitts and potholders, and “RITZ” for cooking classes.). Thus, aside from the fact that these goods may be used together, there is no indication that the consuming public would perceive Defendant’s applied-for goods and Plaintiff’s “vehicle tires” and “tires” goods as originating from the same source. *See id.* at 1245. Accordingly, other than including the term “tire” in the description of each good, any similarity or relatedness of Defendant’s applied for goods with Plaintiff’s registered “vehicle tires” and “tires” goods ends.

9. Defendant’s disagreement with Plaintiff is further supported by the United States Patent and Trademark Office, as the Examining Attorney conducted a complete examination of Defendant’s trademark application, and concluded that “no similar *registered* mark has been found that would bar registration under Trademark Act Section 2(d) [likelihood of confusion].” *See* Office Action dated June 8, 2007, Exhibit C (emphasis original). Plaintiff’s ‘967 Registration was registered on May 20, 1986, while Plaintiff’s ‘292 Registration was registered on October 4, 2005. *See* Plaintiff’s Notice of Opposition, Exhibit B. Accordingly, both of Plaintiff’s Registrations were registered as of 2007 and, based upon the Examining Attorney’s statements, were considered during examination of Defendant’s trademark application.

10. Notwithstanding Defendant’s disagreement with Plaintiff’s assertions regarding likelihood of confusion, Defendant has made repeated attempts to resolve this opposition amicably. Despite Defendant’s diligent efforts, Plaintiff and Defendant have been unable to come to an agreement on a settlement.

11. Defendant continues to aspire for an amicable resolution to the present opposition proceeding and avoid unnecessary litigation. Accordingly, Defendant is willing to amend the

trademark application and remove all goods which could be associated with Plaintiff's "vehicle tires" and "tires" goods respectively listed in the '967 and '292 Registrations.

12. Unfortunately, based upon Defendant's information and belief, Defendant believes acquiring Plaintiff's consent to amend Defendant's trademark application will not be possible.

13. In accordance with 37 C.F.R. 2.133(a) and T.B.M.P. § 514, Defendant respectfully requests the Board, through the instant motion, to amend Defendant's trademark application and revise Defendant's identification of goods in association with the mark "LEGACY". Specifically, Defendant requests the removal of "needles for pumps for inflating tires" and "tire inflation nozzles" from the goods listed in International Class 7 and "tire pressure gauges" and "tire tread depth gauges" from the goods listed in International Class 9.

14. Defendant respectfully requests the Board to amend Defendant's trademark application to include the following identification of goods:

- (a) International Class 007. Goods & Services: Air-operated power tools, namely, impact wrenches, ratchets, sanders, air hammers, chisels, drills, nailers, grinders, cut-off discs; abrasive disks for air-operated power sanders; grinding disks for air-operated power grinders, blow guns; compressed air pumps, machine parts, namely, metal air nozzles, air hose adapters, air hose chucks, needles and connectors which are parts of air-operated power tools; ~~needles for pumps for inflating tires; tire inflation nozzles~~; air operated grease systems, namely, grease pumps, grease guns, grease reservoirs, hoses, hose reels, couplers, plugs, dollies, fittings for connection of hoses, clamps, grease fitting repair tools, grease storage containers, grease dispensers, grease, rechargeable batteries, grease injectors, grease injector needles, grease gun nipples, air bleeder valves, grease gun holders, warming bags for grease guns and grease all for use with dispensing grease; air operated oil systems, namely, oil pumps, oil

control guns, oil gun extensions, oil nozzles, oil swivels, hoses, suction tubes for oil pumps, oil dispensing tappers for oil pumps, couplers, plugs, meters for measuring volume, dollies, oil storage containers, and waste oil recovery containers all for use with pumping oil.

- (b) International Class 009. Goods & Services: ~~Tire pressure gauges, tire tread depth gauges, and~~ electrical circuit testers.
- (c) International Class 021. Goods & Services: Plastic compressed air hose nozzles, hose nozzles, pouring spouts and funnels; plastic pour spouts with valve for mounting on motor oil bottle; plastic spray nozzles.

15. Defendant further requests the subsequent dismissal of the present opposition proceeding, as the remaining goods listed in Defendant's trademark application are unrelated to Plaintiff's "vehicle tires" and "tires" goods respectively listed in the '967 and '292 Registrations.

16. Defendant respectfully requests registration of the mark "LEGACY" in association with the revised identification of goods in International Classes 7, 9, and 21.¹

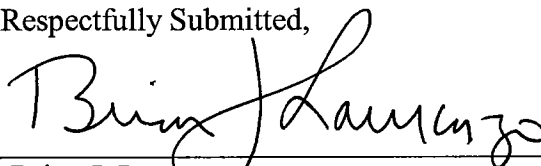
17. Defendant is seeking amendment to Defendant's trademark application without the consent of Plaintiff.

18. By and through this motion, Defendant is not admitting to or conceding that the goods "needles for pumps for inflating tires" and "tire inflation nozzles" in International Class 7 and "tire pressure gauges" and "tire tread depth gauges" in International Class 9 for the mark "LEGACY" are likely to cause confusion with Plaintiff's '967 and '292 Registrations. Defendant is merely seeking an amicable resolution to what Defendant considers an unnecessary opposition proceeding.

¹ Defendant has filed a Motion to Divide Application herewith, requesting the unopposed goods listed in International Classes 6, 8, 17 and 20 be divided into a second trademark application and allowed to mature into a registration.

WHEREFORE, Defendant Weems Industries, Inc. d/b/a Legacy Manufacturing Company respectfully requests that the Board enter an order amending Federal Trademark Application Serial No. 77/109,547 for the mark "LEGACY" to remove "needles for pumps for inflating tires" and "tire inflation nozzles" from the goods listed in International Class 7 and "tire pressure gauges" and "tire tread depth gauges" from the goods listed in International Class 9, dismiss the instant opposition proceeding, allow Federal Trademark Application Serial No. 77/109,547 to issue as a federal registration for the mark "LEGACY", and granting such other and further relief as the Board deems just and proper.

Respectfully Submitted,



Date: February 19, 2010

Brian J. Laurenzo
Jason M. Hunt
Elias R. Swanson
DORSEY & WHITNEY LLP
801 Grand Avenue, Suite 3900
Des Moines, Iowa 50309
Tel: (515) 283-1000
Fax: (515) 283-1060
Email: laurenzo.brian@dorsey.com
**ATTORNEYS FOR DEFENDANT
WEEMS INDUSTRIES, INC. d/b/a LEGACY
MANUFACTURING COMPANY**

Original filed.

Copy to:

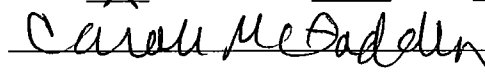
Ms. Marsha G. Gentner
Jacobson Holman PLLC
400 – 7th Street, N.W.
Washington, DC 20004
ATTORNEY FOR PLAINTIFF
BIG O TIRES, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that on February 19, 2010, the foregoing instrument and attached Declaration of Jason Hunt with corresponding exhibits were served upon all parties to the above case and/or to each of the attorneys of record herein at their respective addresses disclosed on the pleadings:

By: Electronic Service **AND/OR**

By: ☒ U.S. Mail ☐ FAX
☐ Hand Delivered ☐ Overnight Courier
☒ E-mail ☐ Other



CERTIFICATE OF FILING

I hereby certify that this DEFENDANT'S MOTION TO AMEND APPLICATION WITHOUT CONSENT is being filed electronically through on-line TTAB filing systems, ESTTA on this 19th day of February, 2010.

Carol McPadden

Exhibit A

**United States Patent and Trademark Office**[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)**Trademarks > Trademark Electronic Search System (TESS)***TESS was last updated on Sat Feb 13 04:02:01 EST 2010*[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE LIST](#) [SEARCH OG](#) [BOTTOM](#) [HELP](#)[Logout](#)

Please logout when you are done to release system resources allocated for you.

Record 1 out of 1[TARR Status](#) [ASSIGN Status](#) [TDR](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

LEGACY

Word Mark LEGACY**Goods and Services**

IC 006. US 002 012 013 014 023 025 050. G & S: Metal hose reels, namely, manually operated hose reels and self-retracting hose reels; metal hose clamps and metal hose fittings; metal couplers and plugs for air hoses. FIRST USE: 20041101. FIRST USE IN COMMERCE: 20041101

IC 007. US 013 019 021 023 031 034 035. G & S: Air-operated power tools, namely, impact wrenches, ratchets, sanders, air hammers, chisels, drills, nailers, grinders, cut-off discs; abrasive disks for air-operated power sanders; grinding disks for air-operated power grinders, blow guns; compressed air pumps, machine parts, namely, metal air nozzles, air hose adapters, air hose chucks, needles and connectors which are parts of air-operated power tools; needles for pumps for inflating tires; tire inflation nozzles; air operated grease systems, namely, grease pumps, grease guns, grease reservoirs, hoses, hose reels, couplers, plugs, dollies, fittings for connection of hoses, clamps, grease fitting repair tools, grease storage containers, grease dispensers, grease, rechargeable batteries, grease injectors, grease injector needles, grease gun nipples, air bleeder valves, grease gun holders, warming bags for grease guns and grease all for use with dispensing grease; air operated oil systems, namely, oil pumps, oil control guns, oil gun extensions, oil nozzles, oil swivels, hoses, suction tubes for oil pumps, oil dispensing tappers for oil pumps, couplers, plugs, meters for measuring volume, dollies, oil storage containers, and waste oil recovery containers all for use with pumping oil. FIRST USE: 20001201. FIRST USE IN COMMERCE: 20001201

IC 008. US 023 028 044. G & S: Manually operated grease guns, manually operated pumps for lubricants and fuels, manually operated lubricators for air powered tools. FIRST USE: 19940201. FIRST USE IN COMMERCE: 19940201

IC 009. US 021 023 026 036 038. G & S: Tire pressure gauges, tire tread depth gauges, and electrical circuit testers. FIRST USE: 19910101. FIRST USE IN COMMERCE: 19910101

IC 017. US 001 005 012 013 035 050. G & S: Hoses for compressed air powered tools, hose kits for

compressed air powered tools consisting of hoses, hose fittings and connectors, nozzles and needles; air hoses, water hoses, oil hoses. FIRST USE: 19870801. FIRST USE IN COMMERCE: 19870801

IC 020. US 002 013 022 025 032 050. G & S: Non-metal hose reels, namely, manually operated hose reels and self-retracting hose reels. FIRST USE: 19930101. FIRST USE IN COMMERCE: 19930101

IC 021. US 002 013 023 029 030 033 040 050. G & S: Plastic compressed air hose nozzles, hose nozzles, pouring spouts and funnels; plastic pour spouts with valve for mounting on motor oil bottle; plastic spray nozzles. FIRST USE: 19890101. FIRST USE IN COMMERCE: 19890101

**Standard
Characters
Claimed**

Mark

Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 77109547

Filing Date February 16, 2007

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition March 18, 2008

Owner (APPLICANT) Weems Industries, Inc. DBA Legacy Manufacturing Company CORPORATION IOWA 6281 North Gateway Drive Marion IOWA 52302

Attorney of Record Brian J. Laurenzo

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

[TESS HOME](#)

[NEW USER](#)

[STRUCTURED](#)

[FREE FORM](#)

[BROWSE DICTIONARY](#)

[SEARCH LOG](#)

[TOP](#)

[HELP](#)

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

Exhibit B

ESTTA Tracking number: **ESTTA224614**Filing date: **07/16/2008**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	BIG O TIRES, LLC
Granted to Date of previous extension	07/16/2008
Address	12650 EAST BRIARWOOD AVENUE CENTENNIAL, CO 80112 UNITED STATES
Attorney information	Marsha G. Gentner Jacobson Holman PLLC 400 - 7th Street, N.W. Washington, DC 20004 UNITED STATES trademark@jhip.com, mgentner@jhip.com Phone:202-638-6666

Applicant Information

Application No	77109547	Publication date	03/18/2008
Opposition Filing Date	07/16/2008	Opposition Period Ends	07/16/2008
Applicant	Weems Industries, Inc. 6281 North Gateway Drive Marion, IA 52302 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 007. First Use: 2000/12/01 First Use In Commerce: 2000/12/01 All goods and services in the class are opposed, namely: Air-operated power tools, namely, impact wrenches, ratchets, sanders, air hammers, chisels, drills, nailers, grinders, cut-off discs; abrasive disks for air-operated power sanders; grinding disks for air-operated power grinders, blow guns; compressed air pumps, machine parts, namely, metal air nozzles, air hose adapters, air hose chucks, needles and connectors which are parts of air-operated power tools; needles for pumps for inflating tires; tire inflation nozzles; air operated grease systems, namely, grease pumps, grease guns, grease reservoirs, hoses, hose reels, couplers, plugs, dollies, fittings for connection of hoses, clamps, grease fitting repair tools, grease storage containers, grease dispensers, grease, rechargeable batteries, grease injectors, grease injector needles, grease gun nipples, air bleeder valves, grease gun holders, warming bags for grease guns and grease all for use with dispensing grease; air operated oil systems, namely, oil pumps, oil control guns, oil gun extensions, oil nozzles, oil swivels, hoses, suction tubes for oil pumps, oil dispensing tappers for oil pumps, couplers, plugs, meters for measuring volume, dollies, oil storage containers, and waste oil recovery containers all for use with pumping oil</p>
<p>Class 009. First Use: 1991/01/01 First Use In Commerce: 1991/01/01 All goods and services in the class are opposed, namely: Tire pressure gauges, tire tread depth gauges, and electrical circuit testers</p>

Class 021. First Use: 1989/01/01 First Use In Commerce: 1989/01/01
All goods and services in the class are opposed, namely: Plastic compressed air hose nozzles, hose nozzles, pouring spouts and funnels; plastic pour spouts with valve for mounting on motor oil bottle; plastic spray nozzles

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1393967	Application Date	10/31/1985
Registration Date	05/20/1986	Foreign Priority Date	NONE
Word Mark	LEGACY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 1985/09/01 First Use In Commerce: 1985/09/01 VEHICLE TIRES		

U.S. Registration No.	3003292	Application Date	11/12/2003
Registration Date	10/04/2005	Foreign Priority Date	NONE
Word Mark	LEGACY TOUR PLUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 1997/04/00 First Use In Commerce: 1997/04/00 TIRES		

Attachments	73566064#TMSN.jpeg (1 page)(bytes) 76559495#TMSN.gif (1 page)(bytes) i5878.nop.pdf (5 pages)(399798 bytes) i5878.att.pdf (6 pages)(403178 bytes)
-------------	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Marsha G. Gentner/
Name	Marsha G. Gentner
Date	07/16/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BIG O TIRES, LLC)	
)	
Opposer,)	
)	
v.)	Opposition No.
)	
WEEMS INDUSTRIES, INC. dba)	
LEGACY MANUFACTURING COMPANY)	
)	
Applicant.)	

NOTICE OF OPPOSITION

In the matter of application to register a trademark under the Trademark Act of 1946, Serial No. 77/109,547, for the mark LEGACY, filed February 16, 2007, in the name of Weems Industries, Inc., dba Legacy Manufacturing Company, published for opposition in the TRADEMARK OFFICIAL GAZETTE of March 18, 2008, Vol. 1328, No. 3, at page TM 73, the Opposer, Big O Tires, LLC, believes it will be damaged by registration of said alleged trademark in International Classes 7, 9, and 21, and hereby opposes same. The grounds for opposition are as follows:

1. The Opposer, Big O Tires, LLC [hereinafter "Big O"], is a limited liability company duly organized and existing under the laws of the State of Nevada and having its place of business at 12650 East Briarwood Avenue, Centennial, Colorado 80112. Opposer distributes and sells a variety of vehicle products, and operates a franchised system of retail stores.

2. Commencing prior to the earliest date of first use alleged in the application opposed herein, Opposer Big O has, and is now, engaged in the production, advertisement, marketing, distribution and sale of its vehicle products in commerce under and in connection with the mark

LEGACY. Opposer continuously has used said **LEGACY** mark alone and in combination with other words and symbols in commerce in connection with its vehicle products advertised, offered, marketed, distributed, and sold by Big O, and to identify and designate same, and to distinguish those goods, and Opposer Big O's business, from those of others.

3. Opposer Big O is the owner of and will rely on herein, the following U.S. trademark registrations:

REGISTRATION NO.	ISSUE DATE
1,393,967	May 20, 1986
3,003,292	October 4, 2005

Said registrations are valid and subsisting, and operate as conclusive and/or *prima facie* evidence of Opposer's ownership of the marks set forth therein and exclusive right to use the registered marks in commerce. Attached hereto is a current printout of information from the electronic database records of the U.S. Patent and Trademark Office showing the current status and title of the aforementioned registrations.

4. On February 16, 2007, Applicant filed an application to register the mark **LEGACY**. Said application was accorded serial no. 77/109,547, and was published for opposition in the **OFFICIAL GAZETTE** of March 18, 2008, at page TM 73, identifying the goods in International Classes 7, 9, and 21 as follows:

Air-operated power tools, namely, impact wrenches, ratchets, sanders, air hammers, chisels, drills, nailers, grinders, cut-off discs; abrasive disks for air-operated power sanders; grinding disks for air-operated power grinders, blow guns; compressed air pumps, machine parts, namely, metal air nozzles, air hose adapters, air hose chucks, needles and connectors which are parts of air-

operated power tools; needles for pumps for inflating tires; tire inflation nozzles; air operated grease systems, namely, grease pumps, grease guns, grease reservoirs, hoses, hose reels, couplers, plugs, dollies, fittings for connection of hoses, clamps, grease fitting repair tools, grease storage containers, grease dispensers, grease, rechargeable batteries, grease injectors, grease injector needles, grease gun nipples, air bleeder valves, grease gun holders, warming bags for grease guns and grease all for use with dispensing grease; air operated oil systems, namely, oil pumps, oil control guns, oil gun extensions, oil nozzles, oil swivels, hoses, suction tubes for oil pumps, oil dispensing tappers for oil pumps, couplers, plugs, meters for measuring volume, dollies, oil storage containers, and waste oil recovery containers all for use with pumping oil, in Class 7;

Tire pressure gauges, tire tread depth gauges, and electrical circuit testers, in Class 9; and

Plastic compressed air hose nozzles, hose nozzles, pouring spouts and funnels; plastic pour spouts with valve for mounting on motor oil bottle; plastic spray nozzles, in Class 21.

5. The mark sought to be registered by Applicant is identical to, a colorable imitation of, and confusingly similar to, Opposer's prior and aforesaid **LEGACY** mark.

6. On information and belief, the Class 7, 9, and 21 goods identified in the application opposed herein are the same, similar and/or related, to the goods in connection with which Big O uses Opposer's **LEGACY** mark, and are and/or will be sold and/or offered through the same and/or similar channels of trade, and/or to the same general class of purchasers, in and to which Big O's products and services are marketed and/or sold.

7. The registration and/or use of the mark set forth in the opposed application in connection with the Class 7, 9, and 21 goods as identified therein, is likely to cause confusion, mistake, and/or to deceive as to origin, sponsorship, and/or association of Applicant's goods sold under the mark sought to be registered by Applicant vis-a-vis Opposer and/or Opposer's **LEGACY**

mark, and/or to mislead purchasers of Applicant's goods and/or Opposer's goods, and/or the public in general, into believing that Applicant's goods are sold by, emanate from, and/or in some way, directly or indirectly, are associated with Big O, and/or Opposer's **LEGACY** mark and/or Opposer's goods, or business, or vice versa, to the damage and detriment of Big O.

8. If Applicant is granted registration on the application opposed herein, and Applicant obtains such rights as conferred under the Principal Register of the Trademark Act of 1946, Applicant will obtain unlawful gain and advantage to which it is not entitled under the Trademark Act of 1946, to the detriment and harm of Opposer.

WHEREFORE, this Opposer, Big O Tires, LLC, believes and alleges that it will be damaged by registration of Serial No. 77/109,547 in International Classes 7, 9, and 21 , as aforesaid, and prays that:

- A. judgment in the present opposition be entered in favor of Opposer;
- B. the present opposition be sustained; and
- C. registration of application serial no. 77/109,547, for the Class 7, 9, and 21 goods set forth therein, be rejected and refused.

Respectfully submitted,

BIG O TIRES, LLC

By:




Marsha G. Gentner
JACOBSON HOLMAN PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004
(202) 638-6666
Email: mgentner@jhip.com

Date: July 16, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of July, 2008, the foregoing Notice of Opposition was served, by mailing same first class and postage prepaid, on the following correspondent as set forth in the records of the U.S. Patent and Trademark Office:

Brian J. Laurenzo
Dorsey & Whitney LLP
801 Grand Avenue
Suite 3900
Des Moines, Iowa 50309-2790



Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-02-08 10:16:43 ET

Serial Number: 73566064 Assignment Information Trademark Document Retrieval

Registration Number: 1393967

Mark (words only): LEGACY

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2006-09-22

Filing Date: 1985-10-31

Transformed into a National Application: No

Registration Date: 1986-05-20

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: SH0 -Office Of Public Record - Special Handling

Date In Location: 2007-09-05

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. BIG O TIRES, INC.

Address:

BIG O TIRES, INC.
12650 EAST BRIARWOOD AVE, STE 2D
CENTENNIAL, CO 80112
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Nevada

GOODS AND/OR SERVICES

International Class: 012

Class Status: Active

VEHICLE TIRES

Basis: 1(a)**First Use Date:** 1985-09-01**First Use in Commerce Date:** 1985-09-01

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2006-09-22 - First renewal 10 year

2006-09-22 - Section 8 (10-year) accepted/ Section 9 granted

2006-09-07 - Section 7 amendment issued

2006-05-16 - Combined Section 8 (10-year)/Section 9 filed

2006-06-26 - Assigned To Paralegal

2006-05-16 - Section 7 amendment filed

2006-05-16 - PAPER RECEIVED

1992-08-28 - Section 8 (6-year) accepted & Section 15 acknowledged

1992-05-19 - Section 8 (6-year) and Section 15 Filed

1986-05-20 - Registered - Principal Register

1986-02-25 - Published for opposition

1986-01-26 - Notice of publication

1986-01-03 - Approved for Pub - Principal Register (Initial exam)

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

MARSHA G GENTNER

Correspondent

MARSHA G GENTNER
JACOBSON HOLMAN PLLC
THE JENIFER BUILDING
400 SEVENTH STREET, N.W.
WASHINGTON, D.C. 20004-2201

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-02-08 10:17:27 ET

Serial Number: 76559495 Assignment Information Trademark Document Retrieval

Registration Number: 3003292

Mark

LEGACY TOUR PLUS

(words only): LEGACY TOUR PLUS

Standard Character claim: Yes

Current Status: Registered.

Date of Status: 2005-10-04

Filing Date: 2003-11-12

Transformed into a National Application: No

Registration Date: 2005-10-04

Register: Principal

Law Office Assigned: LAW OFFICE 107

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2005-10-04

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Big O Tires, Inc.

Address:

Big O Tires, Inc.
12650 East Briarwood Avenue, Suite 2-D

Englewood, CO 80112
United States
Legal Entity Type: Corporation
State or Country of Incorporation: Nevada

GOODS AND/OR SERVICES

International Class: 012
Class Status: Active
TIRES
Basis: 1(a)
First Use Date: 1997-04-00
First Use in Commerce Date: 1997-04-00

ADDITIONAL INFORMATION

Disclaimer: "TOUR"

Prior Registration Number(s):
1393967

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2005-10-04 - Registered - Principal Register
2005-07-12 - Published for opposition
2005-06-22 - Notice of publication
2005-03-24 - Law Office Publication Review Completed
2005-03-18 - Assigned To LIE
2005-03-16 - Approved for Pub - Principal Register (Initial exam)
2005-01-11 - Amendment From Applicant Entered
2004-12-28 - Communication received from applicant
2004-12-28 - PAPER RECEIVED

2004-06-28 - Non-final action mailed

2004-06-25 - Assigned To Examiner

2003-12-08 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

MARSHA G. GENTNER

Correspondent

MARSHA G. GENTNER

JACOBSON HOLMAN PLLC

THE JENIFER BUILDING

400 SEVENTH STREET, N.W.

WASHINGTON, D.C. 20004-2201

Phone Number: (202) 638-6666

Fax Number: (202) 393-5350

Exhibit C

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/109547

APPLICANT: Weems Industries, Inc. d/b/a Legacy Manu ETC.

77109547

CORRESPONDENT ADDRESS:

BRIAN J. LAURENZO
DORSEY & WHITNEY LLP
801 GRAND AVE STE 3900
DES MOINES, IA 50309-2790

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: LEGACY

CORRESPONDENT'S REFERENCE/DOCKET NO: 475451-00039

Please provide in all correspondence:

CORRESPONDENT EMAIL ADDRESS:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 77/109547

The assigned examining attorney has reviewed the referenced application and determined the following:

Prior Pending Applications

The Office records have been searched and no similar *registered* mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02. However, please be advised that potentially conflicting marks in prior-filed pending applications may present a bar to registration.

Information regarding pending Application Serial Nos. 78/742800 and 78/834086 is enclosed. The filing dates of the referenced applications precede applicant's filing date. There may be a likelihood of confusion under Trademark Act Section 2(d) between applicant's mark and the referenced marks. If one or more of the referenced applications registers, registration may be refused in this case under Section 2(d). 37 C.F.R. §2.83; TMEP §§1208 *et seq.*

If applicant believes that there is no potential conflict between this application and the earlier-filed applications, then applicant may present arguments relevant to the issue in a response to this Office action. The election not to submit arguments at this time in no way limits applicant's right to address this issue at a later point.

Action on this application will be suspended pending the disposition of Application Serial Nos. 78/742800 and 78/834086, upon receipt of the applicant's response resolving the following informalities:

1. Identification of Goods in International Class 6

The identification of goods in International Class 6 is acceptable in its entirety.

2. Identification and Classification of Goods in International Class 7

a. The wording "air powered tools" in the identification of goods is unacceptable as indefinite. The applicant may amend this wording to "air-operated power tools," if accurate. TMEP §1402.01.

b. It is unclear from the way the identification is worded and punctuated whether "cut off disc, sanding discs, grinding stones, blow guns, spray nozzles" are the "parts" for the cut off tools or whether the goods are sold individually. If the goods are parts for the cut off tools, then the applicant must insert the word "namely" after "and parts therefor." If the "cut off disc, sanding discs, grinding stones, blow guns, spray nozzles" are sold individually, the applicant is advised as follows: The word "discs" standing alone is unacceptable. The applicant must specify that the discs are components of specific power-operated machines, e.g., abrasive disks for power-operated sanders, abrasive disks for power-operated grinders, etc. The wording "blow guns" in the identification of goods is indefinite and must be clarified. Applicant must amend the identification to specify the common commercial name of the goods. If there is no common commercial name, applicant must describe the product and its intended uses. TMEP §1402.01. "Plastic spray nozzles" are classified in International Class 17, not International Class 7. The only nozzles classified in International Class 7 are nozzles that are parts of power-operated spraying machines.

c. Applicant must clarify the identification of goods by indicating that the "metal compressed air nozzles, air hose adapters, air hose chucks and connectors, needles for pumps for inflating tires" are parts of the compressed air pumps. TMEP §1402.01.

d. The wording "tire inflation nozzles" in the identification of goods is unacceptable as indefinite. The applicant may amend this wording to "tire inflation nozzles for pneumatically operated tire inflation machines," if accurate. TMEP §1402.01.

e. The wording "couplers and plugs for interconnecting pneumatic components and compressed air

hoses, couplers and plugs for interconnecting compressed nitrogen hoses to tire inflators” in the identification of goods must be clarified because it is too broad and could include goods in other international classes. TMEP §§1402.01 and 1402.03.

f. The word “systems” in the identification of goods is indefinite and must be amended to list the major parts or components of the system, as well as describe the nature, purpose and use of the system. Applicant should use common generic terms when specifying the parts or components of the system. TMEP §1402.03.

g. The identification of goods is indefinite and must be clarified because it includes the open-ended wording “including.” TMEP §§1402.01 and 1402.03(a). The identification must be specific and all-inclusive. Therefore, this wording should be deleted and replaced with “namely.” Applicant may amend the identification to list only those items that are within the scope of the goods set forth in the application or within the scope of a previously accepted amendment to the identification. 37 C.F.R. §2.71(a); TMEP §§1402.01 and 1402.03(a).

h. The wording “accessories” in the identification of goods is indefinite and must be clarified. In the identification of goods, applicant must use the common commercial or generic names for the goods, be as complete and specific as possible, and avoid the use of indefinite words and phrases. If applicant uses indefinite words such as “accessories,” “components,” “devices,” “equipment,” “materials,” “parts,” “systems” or “products,” such words must be followed by “namely,” followed by a list of the specific goods identified by their common commercial or generic names. TMEP §§1402.01 and 1402.03(a).

i. For assistance with identifying and classifying goods and/or services in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netahtml/tidm.html>.

j. If applicant prosecutes this application as a combined, or multiple-class application, then applicant must comply with each of the requirements below for those goods and/or services based on actual use in commerce under Trademark Act Section 1(a):

(1) Applicant must list the goods/services by international class with the classes listed in ascending numerical order;

(2) Applicant must submit a filing fee for each international class of goods and/or services not covered by the fee already paid (current fee information should be confirmed at <http://www.uspto.gov>); and

(3) For each additional class of goods and/or services, applicant must submit:

(a) dates of first use of the mark anywhere and dates of first use of the mark in commerce, or a statement that the dates of use in the initial application apply to that class; the dates of use, both anywhere and in commerce, must be at least as early as the filing date of the application;

(b) one specimen showing use of the mark for each class of goods and/or services; the specimen must have been in use in commerce at least as early as the filing date of the

application;

(c) a statement that “the specimen was in use in commerce on or in connection with the goods and/or services listed in the application at least as early as the filing date of the application;” and

(d) verification of the statements in 3(a) and 3(c) in an affidavit or a signed declaration under 37 C.F.R. §2.20. (NOTE: Verification is *not* required where (1) the dates of use for the added class are stated to be the same as the dates of use specified in the initial application, or (2) the original specimens are acceptable for the added class.)

37 C.F.R. §§2.6, 2.34(a), 2.59, 2.71(c), and 2.86(a); TMEP §§810, 904.09, 1403.01 and 1403.02(c).

Please note that the specimens of record are acceptable for International Classes 6, 8, 9, 17, 20, and 21 only. See subsection 8 below regarding the Class 7 specimen.

k Applicant may adopt the following identification of goods in International Class 7, if accurate:
Air-operated power tools, namely, impact wrenches, ratchets, sanders, air hammers, chisels, drills, nailers, grinders, and cut off tools and parts therefor, namely, cut off discs, sanding discs, and grinding discs; compressed air pumps and parts therefor, namely, metal compressed air nozzles, air hose adapters, air hose chucks and connectors, needles for pumps for inflating tires; tire inflation nozzles for pneumatically operated tire inflation machines; pneumatic grease pumping system consisting of pumps, grease guns, grease gun hoses, grease gun hose couplers, grease gun hose fittings, grease dispensers, grease injector needles, grease gun hose clamps; pneumatic oil dispensing system consisting of pumps, oil dispensing guns, oil dispensing gun extensions, oil dispensing gun nozzles, oil dispensing gun hoses. TMEP §1402.01.

l. Please note that, while the identification of goods may be amended to clarify or limit the goods, adding to the goods or broadening the scope of the goods is not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, applicant may not amend the identification to include goods that are not within the scope of the goods set forth in the present identification. The foregoing restriction applies to *all* of the applicant’s classes of goods.

3. Identification of Goods in International Class 8

a. The wording “manually operated oilers” in the identification of goods is indefinite and must be clarified. Applicant must amend the identification to specify the common commercial name of the goods. If there is no common commercial name, applicant must describe the product and its intended uses. TMEP §1402.01.

b. Applicant may adopt the following identification of goods in International Class 8, if accurate:
Manually operated grease guns; manually operated pumps for lubricants and fuels; manually operated oilers in the nature of [give generic name or describe]. TMEP §1402.01.

4. Identification of Goods in International Class 9

a. The wording “couplers” in the identification of goods must be clarified because it is too broad

and could include goods in other international classes. TMEP §§1402.01 and 1402.03.

b. The wording “test equipment for electrical circuits” in the identification of goods is unacceptable as indefinite. The applicant may amend this wording to “continuity test apparatus for electrical circuits” or to “electrical circuit testers,” if accurate. TMEP §1402.01.

c. Applicant may adopt the following identification of goods in International Class 9, if accurate: Tire pressure gauges; tire tread depth gauges; couplers in the nature of [give generic name or describe], and plug connectors; electrical circuit testers. TMEP §1402.01.

5. Identification of Goods in International Class 17

a. The identification of goods is indefinite and must be clarified because it includes the open-ended wording “including.” TMEP §§1402.01 and 1402.03(a). The identification must be specific and all-inclusive. Therefore, this wording should be deleted and replaced with “namely.” Applicant may amend the identification to list only those items that are within the scope of the goods set forth in the application or within the scope of a previously accepted amendment to the identification. 37 C.F.R. §2.71(a); TMEP §§1402.01 and 1402.03(a).

b. Applicant may adopt the following identification of goods in International Class 17, if accurate: Hoses for compressed air powered tools; hose kits for compressed air powered tools consisting of hoses, hose fittings and connectors, nozzles and needles; air hoses, water hoses, oil hoses. TMEP §1402.01.

6. Identification and Classification of Goods in International Class 20

a. Applicant classified “plastic pour spouts with valve for mounting on motor oil bottle” in International Class 20; however, the correct classification is International Class 21. Applicant must either delete these goods or add the goods to its Class 21 identification. 37 C.F.R. §§2.32(a)(7) and 2.85; TMEP §1401.04(b).

b. Applicant may adopt the following identification of goods in International Class 20, if accurate: Non-metal hose reels, namely, manually operated hose reels and self-retracting hose reels. TMEP §1402.01.

7. Identification of Goods in International Class 21

a. The wording “plastic compressed air nozzles” in the identification of goods must be clarified because it is too broad and could include goods in other international classes. TMEP §§1402.01 and 1402.03. Applicant may change this wording to “plastic compressed air hose nozzles” if accurate. TMEP §1402.01.

b. The wording “spouts” in the identification of goods is unacceptable as indefinite. The applicant may amend this wording to “pouring spouts,” if accurate. TMEP §1402.01.

c. Applicant may adopt the following identification of goods in International Class 21, if accurate: Plastic compressed air hose nozzles, hose nozzles, pouring spouts, and funnels. TMEP

§1402.01.

8. Class 7 Specimen

The specimen is not acceptable because it does not show the applied-for mark used in connection with any of the Class 7 goods specified in the application. An application must include a specimen showing the applied-for mark in use in commerce for each class of goods and/or services based on Section 1(a) in the application. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051 and 1127; 37 C.F.R. §§2.34(a)(1)(iv) and 2.56; TMEP §§904 and 1301.04.

In this case, the applicant's Class 7 goods are identified as "air powered tools, namely, impact wrenches, ratchets, sanders, air hammers, chisels, drills, nailers, grinders, cut off tools and parts therefore, cut off disc, sanding discs, grinding stones, blow guns, spray nozzles; compressed air pumps, metal compressed air nozzles, air hose adapters, air hose chucks and connectors, needles for pumps for inflating tires; tire inflation nozzles; couplers and plugs for interconnecting pneumatic components and compressed air hoses, couplers and plugs for interconnecting compressed nitrogen hoses to tire inflators; air operated grease systems including pumps, grease guns and accessories; air operated oil systems including pumps, oil control guns and accessories." The Class 7 specimen is packaging for "plugs." As explained in subsection 2.e. above, it is unclear whether the "plugs" are properly classified in International Class 7. Further, if the "plugs" are sold individually rather than as a component part of a machine, that increases the likelihood that the plugs are classified in a class other than Class 7.

Therefore, applicant must submit the following:

- (1) A substitute specimen showing use of the mark for the Class 7 goods specified in the application; **and**
- (2) The following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **"The specimen was in use in commerce at least as early as the filing date of the application."** 37 C.F.R. §2.59(a); TMEP §904.09. If submitting a specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c).

Examples of specimens for goods are tags, labels, instruction manuals, containers, photographs that show the mark on the goods or packaging, or displays associated with the goods at their point of sale. TMEP §§904.04 *et seq.*

If applicant cannot satisfy the above requirements, applicant may amend the Section 1(a) filing basis (use in commerce) to Section 1(b) (intent to use basis), for which no specimen is required. However, should applicant amend the basis to Section 1(b), registration cannot be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. 15 U.S.C. §1051(c); 37 C.F.R. §§2.76, 2.88; TMEP Chapter 1100.

In order to amend to Section 1(b), applicant must submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **"Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application as of the filing date of the application."** 15 U.S.C. §1051(b); 37 C.F.R. §§2.34(a)(2) and 2.35(b)(1);

TMEP §806.03(c).

Pending a proper response, registration is refused because the specimen does not show the applied-for mark in use in commerce as a trademark or service mark for the identified Class 7 goods. 15 U.S.C. §§1051 and 1127; 37 C.F.R. §§2.34(a)(1)(iv) and 2.56.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

A prompt response to this Office action will expedite the handling of this matter.

/Barbara A. Gaynor/
Barbara A. Gaynor
Trademark Examining Attorney
Law Office 115
571-272-9164

NOTICE OF NEW PROCEDURE FOR E-MAILED OFFICE ACTIONS: In late spring 2007, for any applicant who authorizes e-mail communication with the USPTO, the USPTO will no longer directly e-mail the actual Office action to the applicant. Instead, upon issuance of an Office action, the USPTO will e-mail the applicant a notice with a link/web address to access the Office action using Trademark Document Retrieval (TDR), which is located on the USPTO website at <http://portal.uspto.gov/external/portal/tow>. The Office action will not be attached to the e-mail notice. Upon receipt of the notice, the applicant can then view and print the actual Office action and any evidentiary attachments using the provided link/web address. TDR is available 24 hours a day, seven days a week, including holidays and weekends. This new process is intended to eliminate problems associated with e-mailed Office actions that contain numerous attachments.

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond using the Office's Trademark Electronic Application System (TEAS) Response to Office action form available on our website at <http://www.uspto.gov/teas/index.html>. If the Office action issued via e-mail, you must wait 72 hours after receipt of the Office action to respond via TEAS. **NOTE: Do not respond by e-mail. THE USPTO WILL NOT ACCEPT AN E-MAILED RESPONSE.**
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney's name. **NOTE: The filing date of the response will be the date of receipt in the Office,** not the postmarked date. To ensure your response is timely, use a certificate of mailing. 37 C.F.R. §2.197.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

Print: Jun 8, 2007

78742800

Issue: Jun 19, 2007

DESIGN MARK

Serial Number

78742800

Status

PUBLICATION/ISSUE REVIEW COMPLETE

Word Mark

SCHAEFER LEGACY

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Franklin Electric Co., Inc. CORPORATION INDIANA 400 East Spring Street
Bluffton INDIANA 46714

Goods/Services

Class Status -- ACTIVE. IC 007. US 013 019 021 023 031 034 035. G
& S: Liquid pumps, namely centrifugal pumps, rotary pumps, suction
pumps, sump pumps, pneumatic pumps, submersible pumps, electric pumps,
and vertical turbine pumps, and structural parts thereof; electric
pump motors for machines, and structural parts thereof pump/motor
assemblies comprising combinations of the foregoing; electrical motors
for machines and not land vehicles, all of the foregoing not intended
for use in connection with pressure washers. First Use: 2005/03/00.
First Use In Commerce: 2005/03/00.

Filing Date

2005/10/28

Examining Attorney

YONTEF, DAVID

Attorney of Record

David J. Davis

SCHAEFER LEGACY

Print: Jun 8, 2007

78834086

DESIGN MARK

Serial Number

78834086

Status

NON-FINAL ACTION - MAILED

Word Mark

LEGACY POWER CONVERSION

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Diversified Assembly Technologies Corporation CORPORATION WISCONSIN
Suite 2 N9246 Hwy. 80 South Necedah WISCONSIN 54646

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Power supplies ; Power transformers for amplification; Power-line
transmission machines and apparatus; Voltage regulators for electric
power; Voltage stabilizing power supply.

Filing Date

2006/03/10

Examining Attorney

ALTREE, NICHOLAS

LEGACY

POWER CONVERSION